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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,952	11/30/2001	Herbert Eichenauer	Mo6482/LeA 35,002	5049

157 7590 06/18/2003

BAYER POLYMERS LLC  
100 BAYER ROAD  
PITTSBURGH, PA 15205

EXAMINER

MULLIS, JEFFREY C

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 06/18/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/997,952

Applicant(s)

EICHENAUER, HERBERT

Examiner

Jeffrey C. Mullis

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-25 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit 1711

Applicant's claims 25-27 have been renumbered as 23-25 in accordance with Rule 126.

Applicant's election without traverse of the combination of styrene and acrylonitrile as the vinyl monomer and aromatic polycarbonate as the resin and butadiene as a species of rubber is acknowledged, said election being present in Paper No. 5.

Claims 12 and 13 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear if the "monomodal" and "bimodal" distributions of particle sizes in claims 12 and 13 is intended to encompass both latexes A and B or refers to only A or only B i.e. it is not clear in claim 12 for instance whether A is meant to be monomodal and B monomodal but can have different particle size distributions or if A and B together are to be viewed as monomodal. Claim 13 is similarly confusing.

Claims 3, 5 and 25 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 3, 5 and 25 fail to further limit a preceding claim given that the limitations of claims 3, 5 and 25 may be met by

Art Unit 1711

alphanomethylstyrene or methyl methacrylate or N-phenylmaleimide monomer containing polymers rather than styrene and acrylonitrile such as is not embraced by the claims from which these claims depend. It is suggested that the claims from which claims 3, 5 and 25 immediately depend be amended to recite that optionally styrene and acrylonitrile may be partially replaced by at least one member selected from the group consisting of alphanomethylstyrene, methyl methacrylate and N-phenylmaleimide.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 13 and 18-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Koyama et al. (USP 5,236,911).

Koyama et al. in Examples 10-12 disclose a process in which a methyl methacrylate containing rubber is grafted in the presence of a persulfate (that of Koyama's Example 9) and combined with a "two layer" polymer (Example "1(a)") which is grafted using a redox system containing CHP.

Claims 1-14 and 17-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Eichenauer (WO 00/04067).

Art Unit 1711

Note that WO 00/04067 corresponds to U.S. Patent 6,489,379 and since U.S. Patent 6,489,379 is in English, the U.S. patent will be cited.

Note Example 7 in column 11 of US `379 where rubber is grafted first using a redox system (a process embracing the production of applicant's rubber "A") and then with persulfate (a process embracing the production of applicant's component "B"). Polycarbonate may be added at column 9 lines 34-39. One of the latexes may be bimodal. Note the patent claim 1 in this regard.

The above rejection may be overcome by reciting that "A" and "B" are different grafted rubbers. Applicant should point out support for such an amendment if he intends to amend the claims thusly.

Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (703) 308-2820. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be

Serial No. 09/997,952

-5-

Art Unit 1711

reached on (703) 308-2462. The fax phone number for this Group is before final (703) 872-9310 and after final (703) 8729311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

J. Mullis:cdc

June 13, 2003

Jeffrey Mullis  
Primary Examiner  
Art Unit 1711

